IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Crl.O.P.No.8164 of 2006 and
C.M.P.No.2155 and 2156 of 2006

V.M.Sugumar .. Petitioner

-Vs.-

P.Renugadevi .. Respondent

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to quash all the proceedings in private complaint in C.C.No.26 of 2003 on the file of the Judicial Magistrate No.I, Thiruvannamalai.

For Petitioner : Mr. S.Kumaradevan

For Respondent : No Appearance.

O R D E R

The above criminal original petition has been filed by the accused in C.C.No.26 of 2003 on the file of the Judicial Magistrate No.1, Thiruvannamalai to quash the proceedings in C.C.No.26 of 2003. Though the respondent has been served she is neither appearing in-person nor through counsel.

2. The respondent herein filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") alleging that the petitioner herein borrowed a sum of Rs.50,000/- in the second week of September 2002, promising to repay the same within a fortnight. To discharge the said loan the petitioner herein issued a cheque, dated 01.10.2002, for a sum of Rs.50,000/- drawn on the Tamil Nadu Mercantile Bank and when the said cheque was presented for encashment the same was returned. A notice of demand was sent for which the petitioner sent a reply containing several allegations and in particular the allegation that the respondent's husband when he was at the petitioner's office had stolen some cheque leaves of the petitioner and when he was questioned by the

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petitioner he denied the allegation and believing the words of the respondent's husband the petitioner did not take any steps, but taking advantage of the stolen cheque leaves, the respondent had issued the notice. Since the petitioner failed to pay the amount due under the dishonoured cheque, after complying with all the legal requirements the respondent herein filed the complaint which was taken on file.

3. In the quash petition the petitioner is seeking to quash the proceedings on the ground that although the petitioner is ready to pay the entire amount of Rs.50,000/- to the respondent, the respondent is not co-operating with the petitioner; the respondent is intending to make unjust enrichment by way of using Section 138 of the Act by claiming double the amount of compensation. Except the above said grounds no other grounds have been raised in the quash petition.

4. It is seen that on the representation made by the learned counsel for the petitioner, a learned Judge of this Court has referred the matter to the Mediation Centre and since the respondent did not appear before the Mediation Centre, the matter has been referred back to this Court and hence the above case has been listed for disposal.

5. Heard Mr. S.Kumaradevan learned counsel for the petitioner.

6. Learned counsel for the petitioner submitted that the petitioner is willing to pay the sum of Rs.50,000/- to the respondent, but the respondent is not willing to accept the same and that is the reason why the above quash petition has been filed.

7. At the outset it has to be pointed out that the grounds urged in the quash petition and the submission made by the learned counsel for the petitioner are unsustainable. Even assuming that the petitioner was willing to pay the sum of Rs.50,000/- to the respondent and the respondent had refused to receive the same, that cannot be a ground for seeking quashing of the proceedings. It is not the case of the petitioner that the lower Court is not right in taking cognizance of the complaint filed by the respondent herein. It is not the case of the petitioner that the allegations contained in the complaint does not disclose the commission of an offence under Section 138 of the Act. Therefore, the above quash petition is devoid of merits and the same is liable to be dismissed.

8. A perusal of the records received from the lower Court shows how the petitioner was dragging on the proceedings before the trial court. The complaint had been taken on file on 03.02.2003; on 06.02.2004, the complainant has been examined and Exs.P-1 to P-6 have been marked and summons were issued to the other witnesses; on 27.02.2004, P.Ws.2 and 3 have been examined and Ex.P-7 has been marked and on that day itself, the evidence on the side of the complainant was closed; on 10.03.2004, the accused was questioned and he sought time to examine the defence witness; on 11.03.2004, the petition filed by the petitioner under Section 311 of the Code of Criminal Procedure was allowed to recall P.Ws.1 and 2 for

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cross-examination and from that date onwards the petitioner was taking time again-and-again without cross-examining P.W.1 and ultimately on 29.10.2004 P.W.1 was cross-examined and the case was adjourned to 05.11.2004 for examination of defence witness; from 05.11.2004, on most of the hearing dates, the petitioner/accused was absent and he was taking adjournment after adjournment, but no defence witness was examined; on 31.03.2006 also, at the request of the petitioner/accused, the case was adjourned to 04.04.2006; on 04.04.2006, the learned Magistrate has noted that the originals of Exs.P-1 to P-3 were missing and a communication has been sent to the learned District Judge seeking instructions and the case was adjourned to 13.04.2006. At that stage the above criminal original petition has been filed on 08.03.2006.

9. It is pertinent to point out that in the quash petition, the above said facts have not been stated. It has not been brought to the notice of this Court when the case was taken up for admission that the case has been adjourned by the trial court for the examination of the defence witnesses. Thus the petitioner has suppressed the fact that the complainant had closed his side and the petitioner was going on taking adjournment after adjournment for the examination of the witness on his side. Had all the above said facts been brought to the notice of the learned Judge, the learned Judge would not have entertained the above quash petition at all. The conduct of the petitioner in suppressing the above said material facts is condemnable.

10. In the decision rendered by the Apex Court in the case of Amar Chand v. Shanti Bose reported in AIR 1973 Supreme Court 799, wherein in paragraph 17 it is observed as follows:-

> "17. In our opinion, the High Court was not justified, in the particular circumstances of this case, in quashing the charge as well as the entire proceedings that had taken place before the Magistrate. It is not as if the accused had moved the High Court at the earliest stage when the Presidency Magistrate issued sommons to them. Nor had they approached the High Court when charges were framed against them. The accused had been summoned, after a judicial enquiry by the Chief Presidency Magistrate on December 26, 1967, under Sections 120-B/409 and 409 IPC. Before the Magistrate, the evidence, oral and documentary, was adduced by the complainant in the presence of the accused. On a consideration of such materials, the Presidency Magistrate framed charges against all the four accused as early as September 7, 1968. If the case of the accused was that the allegations in the complaint do not constitute the offence complained of or that the complaint has to be quashed for any ground available in law, they should have approached the High Court, at any rate, immediately after the charges were framed. The records disclose that it was the fourth accused, who moved the High Court to quash the proceeding on March 17, 1969, earlier than the other

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> accused. Even by that date, several prosecution witnesses;. had been examined and they had also been cross-examined by the accused. Several items of documentary evidence had already been let in during the trial. Only two prosecution witnesses and a court witness remained to be examined. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other, and decline to interfere with those proceedings."

The above decision squarely applies to the facts of this case. In this case also, the trial was almost coming to a close and what remains to be done was the examination of defence witnesses if any on the side of the accused and as such at this belated stage it is not proper on the part of this Court to entertain the above petition for quashing.

11. Therefore, when it is seen from the records that the complainant has closed his side of the evidence and the petitioner/accused was dragging on the proceedings by taking adjournment after adjournment to examine the defence witness, but had failed to examine such witness, the Court below should have concluded the trial and heard the arguments and pronounced the judgment. But unfortunately the originals of Exs.P-1 to P-3 were missing from the Court. If really the petitioner was honest in settling the dispute by paying the sum of Rs.50,000/- to the respondent, the petitioner could have very well done that before the trial court itself. There is nothing on record to show that the petitioner made any such offer to the respondent before the trial court. No document evidencing such offer of the petitioner is before this Court to substantiate the contentions put forth in the quash petition. Thus the contention put forth in the quash petition seems to be another attempt on the part of the petitioner to further drag on the proceedings.

12. For the foregoing reasons, the above criminal original petition fails and the same is dismissed. Since, as pointed out above, the petitioner was dragging on the proceedings for nearly about three years and has suppressed the fact that the examination of the witnesses on the side of the complainant was over and the accused/petitioner herein inspite of taking several adjournments had not examined any defence witness will show that the petitioner has not approached this Court with a bona fide intention to settle the dispute as claimed in the quash petition, but he has approached this Court only to further drag on the proceedings.

13. In such circumstance, I am of the view that the petition should be dismissed with exemplary cost of Rs.10,000/-. The petitioner shall pay the exemplary cost of Rs.10,000/- on or before 09.11.2007 to the 'Tamil Nadu State Legal Services Authority, Chennai - 104". The learned Judicial Magistrate No.I, Thiruvannamalai, is hereby directed to complete the trial of the case in C.C.No.26 of 2003 within a period of two months from the date of receipt of a copy of this order without fail and report the same to this Court. Consequently the connected MPs are closed.

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14. Post this petition on 12.11.2007 for reporting compliance.

srk

This petition having been posted on 12.11.2007 for reporting compliance subsequent to the order of this Court dated 25.10.2007 and made herein and in the presence of the aforesaid advocates, the Court made the following Order:

Pursuant to the order passed in Crl.O.P.No.8164/2006 dated 25.10.2007, the petitioner has filed memo to the effect that he has complied with the order dated 25.10.2007.

The said memo filed by the petitioner today, is recorded.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.1, Thiruvannamalai.

2. The Tamil Nadu State Legal Services Authority,
   High Court, Chennai - 104.

3. The Record Keeper, V.R.Section,
   High Court, Madras.

4. The Section Officer,
   Crl.Section, High Court, Madras.

+1 cc to Mr.S.Kumaradevan,Advocate Sr.No.64430.

KM(CO)
dcp/26.10
gp/27.11

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